

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROY DERKSEN,

Plaintiff,

v.

Case No. 05-C-897

**FOND DU LAC COUNTY
CODE ENFORCEMENT,**

Defendant.

DECISION AND ORDER

Roy Derksen (“DerkSEN”) commenced this action by filing a summons and complaint on August 23, 2005. The Defendant, Fond du Lac County Code Enforcement (“the County”), failed to file an answer within twenty days. However, recognizing its mistake, the County filed a motion to enlarge time to answer on October 6, 2005, along with its proposed answer. Subsequently, DerkSEN filed a motion for default judgment because of the County’s delay in filing its answer.

Pursuant to Federal Rule of Civil Procedure 6(b)(2), this Court has discretion to grant an extension of time upon a finding of “excusable neglect.” The term “excusable neglect” encompasses “both simple, faultless omissions to act and, more commonly, omissions caused by carelessness.” *Pioneer Investment Serv. Co. v. Brunswick Associates Ltd. P’ship*, 507 U.S. 380, 388 (1993). Furthermore, the Court is to consider all relevant circumstances

surrounding the omission, including the danger of prejudice to the defendant, the length of the delay, and its potential impact on judicial proceedings. *Id.* at 395.

Here, the County alleged that it followed its normal procedure by promptly passing the complaint to its insurer, who did not timely defend the lawsuit by filing an answer. Based on the County's experience with this particular insurer, the County had every reason to believe that the insurer would not make such a mistake. The County's delay, therefore, was a result of "excusable neglect," and there is no need to enter default judgment against it.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

The County's Motion to Extend Time to File an Answer (Docket No. 8) is **GRANTED**.

The Court **ACCEPTS** the Answer filed by the County on October 6, 2005 (Docket No. 10), and it is now part of the record.

Derksen's Motion for Default Judgment (Docket No. 15) is **DENIED**.

Dated at Milwaukee, Wisconsin this 13th day of December, 2005.

BY THE COURT

s/ Rudolph T. Randa

**Hon. Rudolph T. Randa
Chief Judge**